

COMMONWEALTH OF MASSACHUSETTS

**DAR 23841**

# SUPREME JUDICIAL COURT

DAR No. \_\_\_\_\_

Appeals Court No. 15-P-1309

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**BRYAN ABRANO,**

Defendant/Appellant,

v.

**BRYAN CORPORATION,**

Plaintiff/Appellee.

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ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT

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**PETITIONER/APPELLANT BRYAN ABRANO'S  
APPLICATION FOR DIRECT APPELLATE REVIEW**

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Date: October 15, 2015

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**APPLICATION FOR DIRECT APPELLATE REVIEW  
PURSUANT TO MASS. R. APP. P. 11**

**1. REQUEST FOR DIRECT APPELLATE REVIEW**

The Petitioner/Appellant Bryan Abrano applies to the Supreme Judicial Court pursuant to Mass. R. App. P. 11(a) for direct appellate review of this appeal, which was docketed in the Appeals Court on September 25, 2015. The questions presented in this appeal are both (1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; and (2) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

**2. PRIOR PROCEEDINGS**

This is an appeal by the Petitioner Bryan Abrano from an order disqualifying Petitioner's counsel that was entered by the Suffolk Superior Court, Janet L. Sanders, J., on August 5, 2015.

In March 2015, Respondent Bryan Corporation (the Company) filed an action against Bryan Abrano (Bryan), Bridget Rodrigue (Bridget), and Dennon Rodrigue (Dennon). Bryan and Bridget are two of the Company's three shareholders. The Complaint alleges that, during the time that Bryan and Bridget controlled the Company, the Defendants violated their fiduciary duties by

causing the Company to make unauthorized payments of bonuses and salary increases to themselves and failed to disclose these payments to the third shareholder, their mother, Kim Abrano.

Bryan and the other Defendants filed Answers denying the allegations in the Complaint.

On April 9, 2015, the Company served a Motion to Disqualify Bryan's counsel, the Boston law firm of Yurko, Salvesen & Remz, P.C. (YSR), from representing Bryan in this action. The Motion argued primarily that disqualification was required because YSR had previously represented the Company in Waldman Biomedical Consultancy, Inc. v. Bryan Corp., Middlesex Superior Court, C.A. No. 2013-04705D, between March and July 2014. Bryan opposed the Motion.

A hearing on the Motion to Disqualify was held on August 5, 2015 before the Suffolk Superior Court (Sanders, J.). The superior court did not make any findings of fact or provide a memorandum of decision. Instead, at the conclusion of the hearing, the superior court allowed the Motion "for the reasons set forth ... in the motion itself."

### 3. STATEMENT OF FACTS

The following facts support the Petitioner's Application for Direct Appellate Review:

This case is part of a larger family dispute in which Frank Abrano (Frank) and Kim Abrano (Kim) are set against their children, Bryan and Bridget. Kim, Bryan, and Bridget are the three shareholders of Bryan Corporation, a supplier of pharmaceuticals and medical devices. Kim owns 51% of the outstanding shares of the Company. Bryan and Bridget own 33% and 16%, respectively.

**As A Result Of His Criminal  
Conviction, Frank Abrano Is Banned  
From Any Affiliation With The Company.**

The Company was founded by Frank, who owned 100% of the Company's stock up until 2008.

In 2007, criminal charges were filed in federal court against Frank. The indictment alleged that Frank knowingly and intentionally had caused the Company to defraud hospitals of millions of dollars by selling them a drug that had not been approved by the Food and Drug Administration and may not have been properly sterilized. Frank pled guilty to one count of mail fraud in connection with the distribution of unapproved

and non-sterile drugs. He was sentenced to serve a year and a day in federal prison and to pay a personal fine of \$1 million.

A separate criminal information was filed against the Company arising from Frank's criminal activities. To resolve these charges, the Company was forced to plead guilty to two misdemeanors and to one count of obstruction of an administrative proceeding, to pay a criminal fine of more than \$4.5 million, and was sentenced to one year probation.

In a related civil settlement agreement, the Company agreed to pay an additional \$485,300 fine and agreed that Frank would resign as an officer and director of the Company and would divest his ownership interest. The Company also agreed that it would "not employ or otherwise permit Frank Abrano, directly or indirectly, to provide any services to or have any affiliation with [the Company], and that [the Company] will not allow Frank Abrano to exercise any control, directly or indirectly, or have any ownership interest over [the Company] or any of its operations for a period of twenty years from the effective date of this Agreement."

**Frank Violates The Civil Settlement Agreement.**

To comply with the plea agreement and civil settlement agreement, Frank sold 33% of his shares to his son, Bryan, and 16% of his shares to his daughter, Bridget. Bryan paid approximately \$3.2 million for his shares over five years. Bridget paid approximately \$1.6 million. The remaining shares, or 51% of the outstanding stock of the Company, Frank gifted to his wife, Kim, without payment by her.

After Frank's divestiture of ownership in the Company, Bryan and Bridget constituted a majority of the Company's Board of Directors and controlled the management of the Company. Bryan became the Company's President and CEO. Bridget became its Secretary. Bridget's husband, Dennon, served as Treasurer.

After he was released from prison, Frank increasingly inserted himself into the Company's activities in violation of the civil settlement agreement. For instance, in the winter of 2013-14, Frank was discovered in the Company offices making calls to third parties as though he worked at the Company. In the spring, Frank demanded that the Company make a very substantial donation in his name to a local hospital. Bryan's and Bridget's refusal to make the donation



infuriated him.

In March 2014, Frank went to the Company's bank and, with Kim's cooperation, changed the signing authority on one of the Company's accounts. Bryan and Bridget were removed as signatories leaving Frank and Kim as the only signatories. In June 2014, Bryan learned of Frank's action when Frank had Kim withdraw \$187,000 from the Company's account that Frank and Kim then used to purchase real estate together.

Raising objections to these actions, which were plain violations of the Company's civil settlement agreement, changed nothing. In June 2014, during one of his visits to the office, Frank threatened Bryan and Bridget that he would ensure that they were fired if they did not do what he wanted.

At the end of the Company's fiscal year on June 30, 2014, Bryan and Bridget expected to receive their end-of-year compensation checks which had been significant in years past. After the Company had caused its payroll service provider to issue the checks, Frank had Kim intercepted the checks and withheld them from Bryan and Bridget.

YSR's Representation Of Bryan And Bridget.

At the end of June 2014, Dennon Rodrigue, the Company's Treasurer, reached out to YSR to discuss Frank's interference with the Company's payroll and his ongoing violations of the civil settlement agreement.

Dennon was familiar with YSR because YSR had been retained three months earlier to represent the Company in an entirely unrelated matter pending in Middlesex Superior Court. In that action, Waldman Biomedical Consultancy, Inc., a former regulatory consultant to the Company, had filed a claim against the Company in October 2013. Waldman Biomedical Consultancy, Inc. v. Bryan Corp., Middlesex Superior Court, C.A. No. 2013-04705D. In April 2014, YSR had filed an answer on behalf of the Company and drafted responses to initial discovery requests.

In the three months since it had been retained, YSR's communications with the Company concerning the Waldman matter were with either Bryan or Dennon. Any confidences that YSR received were provided to it by either Bryan or Dennon. YSR never had any contact with Kim or with Frank.

On July 1, 2014, two attorneys at YSR spoke with Dennon in a conference call about the problems

presented by Frank's involvement in the Company's affairs in violation of the civil settlement agreement and his role in intercepting Bryan's and Bridget's payroll checks. The Company's outside general counsel, Bruce Garr, Esq., also participated in the telephone conference.

YSR agreed that it could represent Bryan, Bridget, and Dennon with respect to the dispute with Frank and that such representation would not conflict with its representation of the Company in the Waldman matter. Bryan and Bridget controlled the Company, as two of its three directors. Bryan, Bridget, and the Company all shared an interest in enforcing the civil settlement agreement and ensuring that Frank abide by it. Similarly, there was no dispute between them concerning the compensation checks that the Company had issued that had been intercepted by Kim at Frank's direction. Bryan, Bridget, and Dennon agreed to retain YSR.<sup>1</sup>

#### **Kim Seizes Control Of The Company.**

On July 7, 2014, Kim called a special meeting of the Company shareholders, ostensibly for the purpose of replacing the entire Board with a wholly independent

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<sup>1</sup> Later, at YSR's recommendation, Bridget and Dennon retained separate counsel.

Board. Instead, on July 15, 2014, Kim used her majority interest to remove Bryan and Bridget from the Board and to re-elect herself and to elect two of Frank's allies and friends onto the Board.

Within a day or two of the shareholders' meeting, YSR advised the Company that the change in control had resulted in a conflict and that YSR would cease representing the Company in the Waldman matter. That oral advice was subsequently confirmed in writing. After YSR completed some ministerial tasks and a transition memo, a formal notice of withdrawal was sent to the superior court on July 31, 2014.

**Demand Letter Sent To Kim And Company  
And Action Filed Against Frank And Kim.**

On July 21, 2014, YSR sent a demand letter to Kim and to Mr. Libor Krupica, the president of the Company, on behalf of Bryan and Bridget concerning their claims against Kim and Frank. The letter also asserted that as a result of Frank's and Kim's interference with the end-of-year compensation checks, both Kim and the Company were in violation of the Massachusetts Wage Act, G.L. c. 149, § 148.

Following some unsuccessful efforts to reach a negotiated settlement, Bryan and Bridget filed an

action in Suffolk Superior Court against Frank and Kim on November 7, 2014. The complaint seeks damages arising from the defendants breaches of fiduciary duty and the violation of the Wage Act. No claim was asserted against the Company.

In that action, Bryan is represented by YSR. Kim is represented by Foley Hoag, which also represents her in the instant action. The parties have engaged in ample motion practice (47 docket entries to date).

#### **The Company's March 2015 Complaint**

In March 2015, the Company filed a complaint in Middlesex Superior Court alleging that Bryan and Bridget, along with Bridget's husband, Dennon, had breached their fiduciary duties and conspired with one another resulting in damages to the Company. It is in this action that the motion to disqualify was filed.

#### **4. STATEMENT OF THE ISSUES OF LAW**

1. Whether disqualification of Petitioner's counsel, who had formerly represented the Respondent, is appropriate where the Respondent will not be harmed by counsel's continuing presence in the action.

2. Whether the superior court can rely on the "hot potato" doctrine, which purports to modify Rule

1.7 of the Rules of Professional Conduct and has not been recognized by any Massachusetts appellate court, as grounds to disqualify an attorney.

3. Whether some version of the "hot potato" doctrine should be incorporated into the Rules of Professional Conduct and whether counsel's actions violated that doctrine.

## **5. ARGUMENT**

The facts set forth above demonstrate that YSR carefully followed the Rules of Professional Conduct. The representation of Bryan, Bridget, and Dennon in early July 2014 was permitted by Mass. R. Prof. C. 1.7 since their interests were aligned with the interests of the Company, which they controlled at the time. When Kim seized control of the Company on July 15, 2014, the clients' interests diverged, YSR recognized that the conflict then existed and YSR resolved it consistent with the Rules. Comment [2] to Rule 1.7 states:

If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation ... Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9.

See Comment [2] to Mass. R. Prof. C. 1.7.

Mass. R. Prof. C. 1.9(a) expressly permits an attorney to represent a client in a matter adverse to a former client provided the two matters are not substantially related. That Rule states:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

See Mass. R. Prof. C. 1.9(a).

Since the instant matter is not "substantially related" to the Waldman matter, YSR's representation of Bryan is allowed by the Rules of Professional Conduct and the superior court's order disqualifying YSR was erroneous.

**A. DISQUALIFICATION OF A PARTY'S COUNSEL IS UNWARRANTED UNLESS THE MOVING PARTY CAN DEMONSTRATE SOME HARM FROM COUNSEL'S CONTINUING PARTICIPATION IN THE CASE.**

Disqualification of a party's counsel is a "a drastic measure which courts should hesitate to impose except when absolutely necessary." Adoption of Erica, 426 Mass. 55, 58 (1997). It is "absolutely necessary" only when the questioned behavior of an attorney poses a risk of harm to a litigant or taints the trial of the

cause before the court. E.g., Masiello v. Perini Corp., 394 Mass. 842, 848 (1985) (disqualification necessary as a "prophylactic measure" to protect a present or former client from the risks posed by an attorney's conflict of interests); Serody v. Serody, 19 Mass. App. Ct. 411, 414 (1985) (court properly disqualified attorney who was called as a witness to give testimony prejudicial to his client). Otherwise, there is no legitimate basis to deprive a party of his chosen counsel.

This Court is well aware that motions to disqualify can be used as dilatory and harassing litigation tactics that disrupt the efficient administration of justice. E.g., Gorovitz v. Planning Bd. of Nantucket, 394 Mass. 246, 250 n.7 (1985) ("Court resources are sorely taxed by the increasing use of disqualification motions as harassment and dilatory tactics"). Worse yet, when a litigant uses a motion to disqualify as a litigation tactic, "the very rules intended to prevent public disrespect for the legal profession foster a more dangerous disrespect for the legal process." Borman v. Borman, 378 Mass. 775, 787 (1979).

This Court has an interest in ensuring that motions to disqualify are not used for tactical



purposes. The Court has already held that a litigant seeking to disqualify an opponent's counsel must show more than the "appearance of impropriety." Erica, 426 Mass. at 64. A strict requirement that the party seeking to disqualify an attorney identify some actual or potential harm arising from the attorney's continued presence in the litigation will ensure that disqualification motions are not misused.

In this case, YSR's continued participation in the litigation before the superior court poses no risk of harm to the Company. Since the matters are unrelated, no confidences disclosed to YSR in the Waldman matter are relevant to this action. Moreover, to the extent that YSR received any confidential information in the course of its representation of the Company in the Waldman matter, that information came from Bryan or Dennon, Bridget's husband. Bryan and Dennon already knew any confidential information that might have been disclosed to YSR in the Waldman matter. Bryan and Dennon were the source of such information and provided it to YSR. It is obvious that any attorney, whether it is YSR or another attorney who replaces YSR, will be privy to any confidential information known to them. Disqualifying YSR will not change that.

**B. THE SUPERIOR COURT HAS NO AUTHORITY TO  
DISCIPLINE AN ATTORNEY FOR CONDUCT THAT  
DOES NOT AFFECT THE LITIGATION BEFORE IT.**

The disqualification of YSR served no remedial purpose. It obviously was not imposed to prevent YSR from disclosing to Bryan the confidences that Bryan may have already disclosed to YSR in the Waldman matter. It did not arise from any misconduct in the present action. Instead, the order disqualifying YSR appears to be a sanction imposed at the Respondent's urging for a demand letter that YSR sent to the Company on July 23, 2014, after YSR had informed the Company that it was withdrawing from the Waldman action but before YSR filed the actual notice of withdrawal.

The superior court is not to be the general overseer of the ethics of those attorneys who practice before it. The "exclusive disciplinary jurisdiction" over attorneys practicing in the Commonwealth lies with the Supreme Judicial Court and the Board of Bar Overseers. See S.J.C. Rule 4:01, § 1, as amended, 430 Mass. 1319 (2000). See also Wong v. Luu, 472 Mass. 208, 222 (2015)

Although the superior court does have certain inherent powers, those powers, unlike the powers of this Court, are circumscribed. Wong, 472 Mass. at 222

(superior court's inherent powers are limited to those "necessary to preserve the court's authority to accomplish justice"). The superior court has no power to discipline lawyers for real or imagined violations of the Rules of Professional Conduct outside of the judicial proceeding before it. It has no power to enlarge the scope or reach of the Rules of Professional Conduct. A superior court's inherent powers are limited to those necessary to enforce its lawful orders and to impose fairness, dignity, and decorum in the judicial proceeding before it. See Avelino-Wright v. Wright, 51 Mass. App. Ct. 1, 5 (2000), citing Beit v. Probate & Family Court Dept., 385 Mass. 854, 859 (1982).

Conduct prejudicial to the administration of justice is not "all conduct which is illegal but rather those activities [such as bribery, perjury, misrepresentations to a court] which undermine[] the legitimacy of the judicial processes" or "conduct flagrantly violative of accepted professional norms." Matter of the Discipline of Two Attorneys, 421 Mass. 619, 628-29 (1996) (alterations in original), quoting Florida Bar v. Pettie, 424 So.2d 734, 737-38 (Fla. 1983).

There can be no argument that YSR's act of sending the July 21 demand letter to the Company - nine months

before this litigation was commenced - was conduct prejudicial to the administration of justice in the matter before the superior court. As such, there was no authority for the superior court to disqualify YSR.

**C. THE "HOT POTATO" DOCTRINE HAS NOT BEEN RECOGNIZED IN MASSACHUSETTS.**

Although the superior court did not provide any written explanation of its decision to disqualify YSR, it appears that the decision was based on the fancifully named "hot potato" doctrine. The "hot potato" doctrine, and which might be better described as the "trophy client" doctrine, precludes an attorney from dropping a current client in order to represent a more desirable client who is adverse to the first. The doctrine is based on the rationale that an attorney may not avoid a disqualifying conflict under Rule 1.7 of the Rules of Professional Conduct by dropping the less attractive client like a "hot potato."

No appellate court in Massachusetts has recognized the doctrine. Nor does the doctrine appear anywhere within the Rules of Professional Conduct or accompanying commentary. The scope and application of the doctrine are not at all clear. Does it apply to those instances in which an attorney's representation of the

former client was sporadic, non-litigation, and unrelated to the issues in the newer matter? Is the doctrine restricted to court proceedings, or could an attorney drop a client to undertake a patent matter for one of the client's competitors? How can the doctrine be reconciled with Rule 1.9 which permits an attorney to represent a client in a matter adverse to a former client provided the matters are not "substantially related?" Does the doctrine apply when, as in this case, the two clients were not adverse at the time the attorney entered into a concurrent representation? Is a court to weigh the interests of the new client against the duty of confidentiality owed to the former client? Is disqualification required where the former client will suffer no harm and, as in this case, has been successively represented by prestigious firms, like Goodwin Procter, LLC and Foley Hoag?

**D. THE SCOPE AND APPLICATION OF ANY NEW DOCTRINE THAT WILL GOVERN THE BAR ARE BETTER ADDRESSED THROUGH A SYSTEMIC CONSIDERATION AND NOT THROUGH A DECISIONAL LAW APPROACH.**

Although the case-by-case process used by courts to resolve disputes is a superior method for reaching just results, this Court should reject it as a valid way of creating ethical guidelines for the legal

profession. Ad hoc decisions with little systematic attention to their overall coherence result in a large and disorganized body of decisional law. Ethical guidelines require a logical and systemic framework of clear and precise rules that reliably guide attorneys.

As noted above, the "hot potato" doctrine purports to modify the Rules of Professional Conduct as they pertain to dual representation. In a concurring opinion joined by Justice Spina, Justice Cowin observed that "the issue of dual representation is one of multifaceted overtones and novel complexity." Coke v. Equity Residential Properties Trust, 440 Mass. 511, 518 (2003) (Cowin, J., concurring). Justice Cowin cautioned against an approach of modifying the Rules on a case-by-case basis, as the superior court did here, stating:

The proper interpretation of Rule 1.7 in this shifting landscape requires not a decisional law approach, but systematic consideration. ... [W]e should engage in a coherent study of the problems of dual representation in the organization of contemporary firms and the interplay between Rule 1.7 and motions to disqualify, seeking input from the bar and, in particular, from those firms that such a study is most likely to affect. The proper outcome of such a study should be an addition or amendment to the Massachusetts Rules of Professional Conduct. To the extent that the court suggests that these issues should be dealt with on a case-by-case basis, I do not join in the opinion.

Coke, 440 Mass. at 518.

To the extent that this Court decides that attorneys should have some duty beyond those articulated in the Rules of Professional Conduct that would preclude them from representing a client who is adverse to a former client, the Court should undertake a modification of those Rules.

**E. POLICY CONSIDERATIONS FAVOR CLEAR GUIDANCE  
FOR LAWYERS AND TRIAL COURTS REGARDING  
ETHICAL GUIDELINES.**

Policy considerations support the articulation of a clear rule that, when an attorney's presence in a case will not cause any harm to his former client and does not prejudice the administration of justice, the trial court may not disqualify the attorney. Even in the absence of such harm, if the trial court finds that the attorney's conduct constituted a sufficiently grave violation of any of the Rules of Professional Conduct, the appropriate course is for the trial court to refer the matter to the Board of Bar Overseers. Such a rule will protect litigants and prevent the adversary process, which is by nature often contentious, from devolving into a side-show of allegations of attorney misconduct.

If trial courts have the power to disqualify attorneys in the absence of either any harm to a litigant or to the trial courts administration of justice in the matter before it, litigation adversaries will have incentive to present the trial court with claims of misconduct that should be resolved administratively by the Board of Bar Overseers. Any incentive to divert litigation into disputes over attorney misconduct could well generate "satellite litigation" that will needlessly encumber the business of the courts - a result this Court wisely has sought to avoid in other contexts. See Van Christo Advertising v. M/A-Com/LCS, 426 Mass. 410, 422 (1998) (declining to adopt federal court's more stringent interpretation of Mass. R. Civ. P. 11).

**6. STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

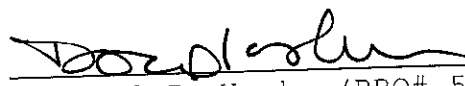
Each of the issues presented above has yet to be decided by the Supreme Judicial Court and is therefore a question of first impression. More importantly, the rules that guide the conduct of Massachusetts attorneys - including the rules that dictate how attorneys are to resolve conflicts of interest - are within the exclusive jurisdiction of the Supreme Judicial Court



and its Board of Bar Overseers. Lawyers need clear guidance on their duties. The Court should provide that guidance and determine whether lawyers in the Commonwealth will be bound by the "hot potato" doctrine, or some version of it.

For the foregoing reasons, Petitioner Bryan Abrano submits that the issues raised in this appeal are appropriate for direct appellate review.

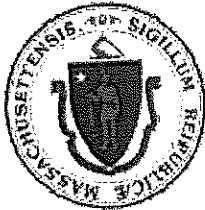
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Dated: October 15, 2015

## **DOCKET ENTRIES**



**COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK COUNTY CIVIL  
Docket Report**

1584CV01639

Bryan Corporation vs. Abrano, Bryan et al

**CASE TYPE:** Contract / Business Cases  
**ACTION CODE:** BA3  
**DESCRIPTION:** Liability of Shareholders, Directors,  
 Officers, Partners, etc.  
**CASE DISPOSITION DATE:** 09/21/2015  
**CASE DISPOSITION:** Disposed  
**CASE JUDGE:**

**FILE DATE:** 06/03/2015  
**CASE TRACK:** B - Special Track (BLS)  
**CASE STATUS:** Open  
**STATUS DATE:** 09/21/2015  
**CASE SESSION:** Business Litigation 2

**LINKED CASE**

1484CV03509

**DCM TRACK**

Tickler Description	Due Date	Completion Date

**PARTIES**

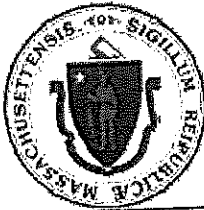
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676911



**COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK COUNTY CIVIL  
Docket Report**

<b>Defendant</b> Abrano, Bryan	<b>Private Counsel</b> Richard J. Yurko Yurko, Salvesen & Remz, P.C. Yurko, Salvesen & Remz, P.C. One Washington Mall 11th Floor Boston, MA 02108 Work Phone (617) 723-6900 Added Date: 06/03/2015	538300
	<b>Private Counsel</b> Douglas W. Salvesen Yurko, Salvesen & Remz, P.C. Yurko, Salvesen & Remz, P.C. One Washington Mall 11th Floor Boston, MA 02108-2603 Work Phone (617) 723-6900 Added Date: 06/03/2015	550322
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**COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK COUNTY CIVIL  
Docket Report**

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670989

**PARTY CHARGES**

#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date
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**EVENTS**

Date	Session	Event	Result	Resulting Judge
08/05/2015	Business Litigation 2	Rule 16 Conference	Held as Scheduled	
08/05/2015	Business Litigation 2	Hearing	Held as Scheduled	
08/05/2015	Business Litigation 2	Hearing	Held as Scheduled	
10/15/2015	Business Litigation 2	Rule 16 Conference	Not Held	Sanders
10/15/2015	Business Litigation 2	Hearing	Not Held	Sanders
04/01/2016	Business Litigation 2	Motion Hearing		

**FINANCIAL DETAILS**

0.00      0.00      0.00      0.00

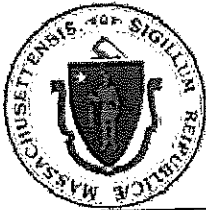
No Financial Data for this report



**COMMONWEALTH OF MASSACHUSETTS  
SUFFOLK COUNTY CIVIL  
Docket Report**

**INFORMATIONAL DOCKET ENTRIES**

Date	Ref	Description	Judge
06/03/2015		Origin 91, Type BA3, Track B.	
06/03/2015		Transferred from Middlesex Superior Court [1581CV01374]: Accepted into the Business Litigation Session of the Suffolk Superior Civil Court (See P#17)	
06/03/2015	1.00	Complaint and Jury demand	
06/03/2015	2.00	Civil action cover sheet re: complaint	
06/03/2015	3.00	Plaintiff's MOTION for appointment of special process server Beacon Hill Research, Inc. - ALLOWED (Salinger, J) Dated 3/16/15	
06/03/2015	4.00	SERVICE RETURNED: Bryan Abrano(Defendant) by leaving at the last and usual place of abode on 3/16/15	
06/03/2015	5.00	SERVICE RETURNED: Bridget Rodrigue(Defendant) by leaving at the last and usual place of abode on 3/16/15	
06/03/2015	6.00	SERVICE RETURNED: Dennon Rodrigue(Defendant) by leaving at the last and usual place of abode on 3/16/15	
06/03/2015	7.00	ANSWER: Defendant Bryan Abrano	
06/03/2015	8.00	ANSWER & Jury demand: Defendant Dennon Rodrigue (all issues)	
06/03/2015	9.00	ANSWER & Jury demand: Defendant Bridget Rodrigue (all issues)	
06/03/2015		Defendant Bryan Abrano's Notice of intent to file motion to consolidate with pending action in the Business Litigation Session entitled Bryan Abrano and Bridget Rodrigue v. Frank Abrano and Kim Abrano C.A. No. 14-3509-BLS2	
06/03/2015	10.00	Defendant Bryan Abrano's MOTION for Dismissal or other relief for Plaintiff's failure to attend deposition	
06/03/2015	11.00	Opposition to "Motion for dismissal or other relief for Plaintiff's failure to attend deposition" and CROSS-MOTION for Sanctions filed by Bryan Corporation	
06/03/2015	12.00	Plaintiff Bryan Corporation's MOTION to disqualify its former counsel from representing Defendant Bryan Abrano	
06/03/2015	13.00	Opposition to motion to disqualify filed by Bryan Abrano	
06/03/2015	14.00	Affidavit of Richard J. Yurko	
06/03/2015	15.00	Request for hearing filed by Bryan Corporation on its motion to disqualify its former counsel from representing Defendant Bryan Abrano	
06/03/2015	16.00	Court received letter addressed to Hon. Robert N Tochka from Plaintiff requesting leave to submit a reply brief in support of its motion to disqualify its former counsel from representing Defenadnt Bryan Abrano - Leave to file 5 page brief is ALLOWED (Tockha, J) Dated 4/30/15	
06/03/2015		Defendant Bryan Abrano's Notice of intent to file motion to consolidate with SUCV14-3509 pending in Suffolk Superior Civil Court	
06/03/2015		Notice of Ruling on Motion to Consolidate (P#33 in SUCV14-3509) has been ALLOWED	



**COMMONWEALTH OF MASSACHUSETTS  
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06/03/2015	17.00	NOTICE OF ACCEPTANCE INTO THE BUSINESS LITIGATION SESSION: After the court's (Roach, J) review of the plaintiffs' motion to consolidate (filed in SUCV2014-03509-BLS2), this case has been accepted into the Suffolk Business Litigation Session and will be assigned to BLS2. As soon as the original papers are received from Middlesex, this case will be given a new Suffolk County docket number. The parties will be notified accordingly. Counsel shall discuss with their clients and with opposing counsel whether the parties will participate in the BLS Pilot Project on Discovery (counsel are directed to <a href="http://www.mass.gov/courts">http://www.mass.gov/courts</a> and <a href="http://judges/superiorcourt/index.html">judges/superiorcourt/index.html</a> for description of the Project). Counsel may indicate their respective client's participation by completing, filing and serving the attached form. (Janet L. Sanders, Justice) Dated: 5/20/15
06/03/2015	18.00	Copy of docket entries received from Middlesex Superior Court
06/09/2015	19.00	NOTICE OF SUFFOLK BUSINESS LITIGATION SESSION NUMBER: This case has been transferred from Middlesex County into Suffolk Business Litigation Session and has been Assigned to BLS2. (Helen Foley-Bousquet, Assistant Clerk) (dated 6/9/15) notice sent 6/9/15
06/18/2015		Plaintiff Bridget Rodrigue's MOTION to compel Bryan Corporation to comply with subpoena (See P#34 in SUCV14-3509)
06/18/2015		Non-Party Bryan Corporation's (A) Opposition to "Plaintiff, Bridget Rodrigue's motion to compel Bryan Corporation to comply with subpoena" and (B) CROSS-MOTION for Protective Order (See P#35 in SUCV14-3509)
06/18/2015		Affidavit of Kristyn M. DeFilipp in support of non-party Bryan Corporation's (A) opposition to "Plaintiff, Bridget Rodrigue's motion to compel Bryan Corporation to comply with subpoena" and (B) Cross-motion for protective order (See P#36 in SUCV14-3509)
06/18/2015		Request for hearing filed by Non-Party Bryan Corporation (See P#37 in SUCV14-3509)
06/18/2015		Bryan Corporation's MOTION to file Confidential Exhibits Under Seal and Affidavit (See P#38 in SUCV14-3509)
06/18/2015		Reply to Opposition (P#35) of Bryan Corporation to motion to compel and Opposition to Cross-Motion filed by Bridget Rodrigue (See P#39 in SUCV14-3509)
06/18/2015		Request for hearing on its motion to compel and opposition to cross-motion filed by Bridget Rodrigue (See P#40 in SUCV3509)
08/05/2015		Joint Status Report for Rule 16 Conference in Civil Action No. 15-1639 (See P#44 in SUCV14-3509)
08/05/2015		Joint Status Report for rule 16 conference in civil action #15-1639 (see P#44 in docket 14-3509)
08/06/2015		Motion (P#10) DENIED (Janet L. Sanders, Justice) Notices mailed 8/6/2015 (entered 8/5/15)
08/06/2015		Motion (P#12) ALLOWED for reasons set forth in memorandum of support of motion and after extensive argument at hearing. (Janet L. Sanders, Justice) Notices mailed 8/6/2015 (entered 8/5/15)



**COMMONWEALTH OF MASSACHUSETTS  
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08/06/2015		Repor (P#44) Amended pleadings deadline 10/1/15 further rule 16 C N to be 10/15/15 @ 2:00 st which tracking order deadlines to be reported (Sanders,J) Notice sent 8/6/15 (entered 8/5/15) (see P#44 in docket #14-3509)
08/18/2015	20.00	1CD received from Approved Court Transcriber Michael Drake for September 5, 2015
08/21/2015	21.00	Defendant Bryan Abrano's notice of appeal
08/24/2015		Notice of service of the filling of Notice of Appeal to: Euripides D Dalmanieras, Esquire, Foley Hoag LLP; Kristyn Marie DeFilipp, Esquire; Douglas W Salvesen, Esquire, Yurko Salvesen & Remz PC; Richard J Yurko, Esquire; Anthony Fioravanti, Esquire; Matthew C. Welnicki, Esquire, Melick & Porter LLP; John G. Wheatley, Esquire
09/14/2015		Bryan Abrano's MOTION to Stay consolidated Proceedings Pending Appeal of Court's August 5, 2015 Decision (See P#45 in SUCV14-3509)
09/14/2015		Opposition to "Bryan Abrano's motion to stay consolidated proceedings pending appeal of Court's August 5, 2015 Decision" filed by Bryan Corporation and Kim Abrano (See P#46 in SUCV14-3509)
09/14/2015		Defendant Frank Abrano's Joinder in Bryan Corporation's and Kim Abrano's Oppositon to Bryan Abrano's motion to stay consolidated proceedings pending appeal of Court's August 5, 2015 Decision (See P#47 in SUCV14-3509)
09/21/2015		Notice of assembly of record on Appeal Sanders
09/29/2015		Event Result: The following event: Hearing scheduled for 10/15/2015 02:00 PM has been resulted as follows: Result: Not Held Reason: By Court prior to date Sanders
09/29/2015		Event Result: The following event: Rule 16 Conference scheduled for 10/15/2015 02:00 PM has been resulted as follows: Result: Not Held Reason: By Court prior to date Sanders
09/29/2015		The following form was generated:  Notice to Appear Sent On: 09/29/2015 15:48:42

Oct. 15, 2015 I HEREBY ATTEST AND CERTIFY ON THAT THE FOREGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE, AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE  
SUFFOLK SUPERIOR CIVIL COURT  
DEPARTMENT OF THE TRIAL COURT

BY: Michael Joseph Donovan  
Clerk/Magistrate



# 1581CV01374 Bryan Corporation vs. Abrano, Bryan et al

Case Type Contract / Business Cases  
 Status Date: 03/13/2015  
 Case Judge:  
 Next Event:

Case Status Open  
 File Date 03/13/2015  
 DCM Track: A - Average

All Information Party Event Tickler Docket Disposition

## Docket Information

Docket Date	Docket Text	File Ref Nbr.
03/13/2015	Original civil complaint filed.	1
03/13/2015	Civil action cover sheet filed.	2
03/13/2015	Demand for jury trial entered.	
03/13/2015	Appearance entered On this date Fri Mar 13 00:00:00 EDT 2015 Dalmanieras, Esq., Euripides D. added for Bryan Corporation	
03/13/2015	Case assigned to: DCM Track AVG was added on 03/13/2015 with the following milestones: Service Due 06/11/2015 Answer Due 07/13/2015 Rule 12/19/20 Served By Due 07/11/2015 Rule 12/19/20 Filed By Due 08/10/2015 Rule 12/19/20 Heard By Due 09/09/2015 Rule 15 Served By Due 05/06/2016 Rule 15 Filed By Due 06/06/2016 Rule 15 Heard By Due 06/06/2016 Discovery Due 03/02/2017 Rule 56 Served By Due 04/03/2017 Rule 56 Filed By Due 05/01/2017 Final Pre-Trial Conference Due 08/29/2017 Judgment Due 03/12/2018	
03/16/2015	Bryan Corporation's MOTION for appointment of Special Process Server. Motion Allowed Beacon Hill Research, Inc. Appointed As Special Process Server. (Salinger, J.)	3
03/16/2015	Service Returned for Defendant Abrano, Bryan: Service made at last and usual; 63 Boulder Road, Wellesley, MA 02401.	4
03/16/2015	Service Returned for Defendant Rodrigue, Bridget: Service made at last and usual; 11 Pleasant View Drive, Hatfield, MA 01038.	5
03/16/2015	Service Returned for Defendant Rodrigue, Dennon: Service made at last and usual; 11 Pleasant View Drive, Hatfield, MA, 01038.	6
03/30/2015	Appearance entered On this date Douglas W Salvesen, Esq. added as Private Counsel for Defendant Bryan Abrano	
03/30/2015	Appearance entered On this date Richard J Yurko, Esq. added as Private Counsel for Defendant Bryan Abrano	
03/30/2015	Appearance entered On this date Anthony B. Fioravanti, Esq. added as Private Counsel for Defendant Bryan Abrano	
04/02/2015	Appearance entered On this date Matthew C. Welnicki, Esq. added for Defendant Bridget Rodrigue	
04/02/2015	Appearance entered On this date Matthew C. Welnicki, Esq. added for Defendant Dennon Rodrigue	
04/08/2015	Received from	

Defendant Abrano, Bryan: Answer to original complaint;		
04/08/2015	Received from	8
	Defendant Rodrigue, Dennon: Answer with claim for trial by jury;	
04/09/2015	Received from	9
	Defendant Rodrigue, Bridget: Answer with claim for trial by jury;	
04/16/2015	Plaintiff's Notice of intent to file motion to consolidate.	10
	Applies To: Bryan Corporation (Plaintiff)	
04/22/2015	Defendant Bryan Abrano's Motion to dismiss plaintiff's complaint MRCP 12(b) or other relief for Plaintiff's failure to attend deposition.	11
04/22/2015	Opposition to paper #11.0 "Defendant Bryan Abrano's Motion to dismiss plaintiff's complaint MRCP 12(b) or other relief for Plaintiff's failure to attend deposition. " filed by Bryan Corporation	11.1
04/27/2015	Plaintiff Bryan Corporation's Motion to Disqualify its former Counsel from representing Defendant, Bryan Abrano	12
04/27/2015	Opposition to paper #12.0 Defendant's opposition to Motion to Disqualify filed by	12.1
	Applies To: Abrano, Bryan (Defendant)	
04/27/2015	Affidavit of Richard J. Yurko	12.2
04/27/2015	Request for hearing filed	12.3
	Applies To: Bryan Corporation (Plaintiff)	
04/27/2015	General correspondence regarding Court received letter address to Honorable Robert N. Tochka. RE Request leave to Submit a reply brief. Endorsement: Leave to file 5 page reply brief is ALLOWED. Dated: April 30, 2015 Notices mailed 5/13/2015	13
05/04/2015	Defendant Bryan Abrano's Notice of Filing of Motion to Consolidate	13.1
05/11/2015	General correspondence regarding "Notice of ruling on motion to consolidate"	14
	Applies To: Yurko, Esq., Richard J (Attorney) on behalf of Abrano, Bryan (Defendant)	
05/19/2015	Event Result: The following event: Motion Hearing scheduled for 05/21/2015 02:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session Appeared:	
06/11/2015	Appearance entered On this date Christopher J. Cifrino, Esq. added for Plaintiff Bryan Corporation	
06/25/2015	Order:	15
	Notices of Acceptance into Business Litigation Session: This case has been accepted into the Suffolk Business Litigatoin Session	
	Dated: May 26, 2015	